

COURT OF APPEAL FOR ONTARIO

CITATION: Ontario (Attorney General) v. Lochner, 2018 ONCA 910

DATE: 20181114

DOCKET: C65386

Feldman, Roberts and Fairburn J.A.

BETWEEN

Ontario (Attorney General)

Respondent

and

Lina Lochner and Silvano Lochner

Appellants

Silvano Lochner, acting in person

Hannah Freeman, for the respondent

Heard: November 5 and 6, 2018

On appeal from the order of Justice Anne M. Molloy of the Superior Court of Justice, dated May 14, 2018, with reasons reported at 2018 ONSC 2994.

REASONS FOR DECISION

[1] Silvano Lochner and his mother, Lina Lochner, appeal from the dismissal of an application for *mandamus* before Molloy J. That application arose from a Justice of the Peace's refusal to issue process arising from a private information. Molloy J. found that the Justice of the Peace had acted within her jurisdiction and did not deny the appellants natural justice.

[2] On the last occasion this appeal was scheduled to be argued, the appeal could not go ahead because Mrs. Lochner was said to be in ill health. The appeal was rescheduled for hearing on November 5, 2018.

[3] On that date, another adjournment was requested because Mrs. Lochner, who was present in court with an Italian interpreter, was again said to be in ill health.

[4] The court agreed to adjourn the matter to the following morning at 9:30 a.m. The court endorsed the record that, absent a medical note explaining Mrs. Lochner's condition and why she could not be present for her appeal, the matter would go ahead at that time.

[5] On November 6, 2018, Mr. Lochner attended court in his mother's absence. He had a medical note saying that until November 14, 2018, Mrs. Lochner should "avoid court/will be unable to attend due to her medical condition as she has been developing severe anxiety and panic attacks." Mr. Lochner asked for the appeal to be adjourned to December.

[6] Crown counsel asked that the matter be converted to an in writing appeal.

[7] Mr. Lochner argued that the matter not be converted to an in writing appeal. Although he first said that his mother wanted to make submissions, he later proposed that he make submissions on her behalf in December.

[8] We are prepared to give Mr. Lochner one last chance to present his case through oral submissions. The appeal is scheduled to be heard on December 10, 2018 at 10:00 a.m. The matter will be marked peremptory, meaning that it will go ahead on that date. Mr. Lochner will have 10 minutes to make oral submissions and the Crown will have 5 minutes to respond. If Mr. Lochner wishes to reply to the Crown's submissions, he will have to reserve some of his 10 minutes for that purpose.

[9] Mr. Lochner says that he will appear for both Mrs. Lochner and himself. It appears that Mrs. Lochner finds court too stressful. She is not required to attend, but her appeal is also marked peremptory for that date.

"K. Feldman J.A."
"L.B. Roberts J.A."
"Fairburn J.A."